10 December 1979

MEMORANDUM FOR: General Counsel

25X1 ATTENTION: [redacted]

25X1 FROM: [redacted] Executive Officer
Office of Medical Services

SUBJECT: SSCI Intelligence Charter Drafts of 6 November 1979

REFERENCE: OGC 79-10881 dated 4 Dec. 1979, Same Subject

1. We have reviewed the SSCI's revised draft of Title IV of intelligence charter dated 6 November 1979 and note that all reference to authorization to conduct a medical program has been deleted.

2. I raised this point and our concern with your office after the last revision, apparently to no avail.

3. The authority to conduct a medical program was deleted as being redundant. If that is the case, it is requested that OMS be advised in writing of the authority for CIA to conduct a medical program [redacted] 25X1

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[redacted]

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cc: C/ISS

DEC 11 10 45 AM '79

OGC 79-10881
4 December 1979

79-120

MEMORANDUM FOR: [redacted] 25X1

FROM: [redacted]
Special Assistant to the General Counsel

SUBJECT: SSCI Intelligence Charter Drafts of 6 November 1979

1. Attached for your information and review are the SSCI's revised drafts of Titles I - VII of intelligence charters dated 6 November 1979, a transmittal memorandum to the Charters Working Group, and my analysis of Title I. A similar analysis of Title II will be provided to you when completed.

25X1 2. [redacted] of this Office and I have met with representatives of several components over the past two months in an effort to respond to questions and concerns about Titles I (National Intelligence), Title IV (CIA), and Title VI (NSA). We feel the issues are now well-known and defined. Nevertheless, I would appreciate your review of these latest drafts for any new issues or concerns from the perspective of your operations or interests.

[redacted] 25X1

Attachments

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Office of General Counsel

OGC 79-10778

30 November 1979

MEMORANDUM FOR: Intelligence Charters Working Group

FROM: Daniel B. Silver
General Counsel

SUBJECT: SSCI Charter Drafts of 6 November 1979

1. Attached for your information and review are the subject drafts and two SSCI memoranda on charters principles and issues. As I understand it, the attached package was provided to the Vice President's Office on 14 or 15 November. The NSC Staff forwarded the drafts to me on 23 November.

2. The status of the new drafts is unclear. According to the SSCI staff, they represent at least the views of Senator Huddleston, Chairman, Subcommittee on Charters and Guidelines. Other members of the Subcommittee were given the opportunity to make an input to the drafts, but the drafts apparently were not considered at a formal Subcommittee session.

3. Attached for your review is an analysis prepared by [redacted] of Title I in comparison to its Administration counterpart. He will provide a similar analysis of Title II as soon as possible. There will be a Working Group meeting on Monday, 10 December, at 2:00 p.m., [redacted], to discuss Titles I and II as well as the nature and scope of a report by the Working Group to the SCC principals.

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25X1

Daniel B. Silver

Attachments

SUBJECT: SSCI Charter Drafts of 6 November 1979

Distribution:

Brent Rushforth, DoD
25X1 [redacted] NSA
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1 - Each Working Group Member
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OGC/GWC:ba (30 Nov 79)

11/6/79

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CHARTER PRINCIPLES

PRINCIPLE 1: There should be a presumption against investigating any American person who is not suspected of wrongdoing.

Positive foreign intelligence: Scientists who have attended an international symposium on lasers, international oil company executives, Senators who have met with foreign leaders -- all could be said to possess "essential" foreign intelligence. When should clandestine collection be directed against these innocent Americans? The current draft allows the President, and only the President, to authorize the direction of "covert techniques" against "innocent" Americans for positive foreign intelligence where the information is essential to the national security. The key safeguard is the requirement of Presidential assent before using covert techniques. However, in the current draft, "covert techniques" is not defined. Thus, if a technique such as physical surveillance or recruitment of informants is not included in a statutory definition (or in subsequent guidelines), then those techniques could be used without Presidential assent.

An alternative approach (not restated in the current draft) might be to require Presidential assent any time techniques other than interviews, physical surveillance for the purpose of identification, or checks of government records is used.

Whichever approach is taken, it should not be seen as sanctioning widespread use of intrusive techniques against Americans who have done nothing wrong.

Once the above question of standards for collection of positive foreign intelligence is resolved, there still remains the question of who should be allowed to collect such intelligence about Americans in the United States. It would seem best that only one agency -- the FBI -- operating under the direct supervision of the Attorney General, should "target" innocent Americans through clandestine methods within the United States for this purpose.

Potential source investigations: The recruitment of potential sources within the United States is often essential to the work of the intelligence community. At the same time, investigations of potential sources of information or operational assistance conflict with the general principle that Americans must have done something wrong before they will be investigated. Strict safeguards must be instituted for these kinds of cases. Perhaps the kinds of techniques to be permitted in potential source investigations should be limited to interviews of knowledgeable persons, physical surveillance for identification purposes only, and searches of governmental records. If, in fact, other techniques must also be used, perhaps they should be approved by the Justice Department or the head of the collecting agency.

PRINCIPLE 2: Special activities should be regarded as exceptional acts.

The Church Committee concluded "that covert action must be seen as an exceptional act, to be undertaken only when the national security requires it and overt means will not suffice." Strict procedural safeguards are required to ensure that covert action is used only in appropriate circumstances. Review by the National Security Council is required in the first instance. In authorizing a special activity, the President should have to find it is important (if not essential) to the national security, that it is consistent with American principles, that overt means will not suffice, and that the risk justifies the activity. Although the President may approve an entire category of special activities when the activities themselves do not entail substantial risks, resources, or consequences, in other cases Presidential attention should be focused upon each activity. Finally, to ensure proper Congressional oversight, the Intelligence Committee should have prior notice of special activities; at the same time, the Hughes-Ryan reporting to other committees will no longer be necessary.

To ensure accountability, the conduct of all special activities should be centralized in the Central Intelligence Agency. A limited exception, however, may be made for the Department of Defense during a period of hostilities or in regard to military matters.

PRINCIPLE 3: The integrity of fundamental institutions must be maintained.

Restrictions placed on the use of clerics, journalists, academics, etc. for paid operational uses or for cover purposes will help maintain the integrity of certain fundamental institutions of our society. These restrictions should include: (1) the CIA may not use U.S. religious organizations, media organizations, educational institutions, the Peace Corps, or any Government program designed to promote education or the arts for cover purposes; (2) the CIA may not use as a covert source of assistance a United States person who is traveling under the sponsorship and support of any U.S. educational institution, except with prior consent of that institution; and (3) the CIA may not pay for covert assistance any U.S. cleric, U.S. journalist, or U.S. person who is outside the United States under the sponsorship and support of a Government program designed to promote education or the arts.

Nothing ought to prohibit voluntary contacts or the voluntary exchange of information with any person in any entity of the intelligence community.

PRINCIPLE 4: The intelligence committees must be kept "fully and currently informed."

Congressional oversight: The linchpin of the charters as a whole is that the two intelligence committees be kept "fully and currently informed." It should be recognized that the charters place a considerable burden on the intelligence committees to act more or less as proxies of the American public. Given this understanding, charters should provide a structure that permits the intelligence community to perform necessary activities, but at the same time ensure accountability through adequate Congressional oversight.

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MEMORANDUM

TO:

FROM:

DATE: November 6, 1979

SUBJECT: Charter Draft

The following are the major differences we perceive between the latest draft and the interagency working group position.

Title I

(1) Special activities purpose. Sec. 131 states that the purpose "is to ensure that special activities are undertaken only to meet exceptional circumstances affecting important interests of the United States." The working group opposes "exceptional circumstances." However, that language is needed to make clear the intent that covert action is not to be used unless the exceptional procedural requirements of this Act are followed.

(2) Agencies conducting special activities. Sec. 132(a) allows special activities only by CIA, or by DOD during hostilities or with Presidential approval for "military matters." The working group would let any agency conduct special activities, if the President or the NSC (for low-risk activities) determines that the U.S. objective is more likely to be achieved. However, the working group approach is unnecessary, because Sec. 132(b) permits other agencies to "support" CIA or DOD special activities.

(3) Presidential authorization for special activities. Sec. 133 requires Presidential approval for each special activity that involves "substantial resources, risks, or consequences." The President must also "determine that" special activities are consistent with U.S. values, overt alternatives are unlikely to succeed, and benefits justify risks and consequences. The working group opposes the "consequences" standard, and prefers that the President "consider" the factors. However, the "consequences" standard is needed to include an action, such as overthrow of a government, that may involve few resources with assured secrecy and thus little risk. A Presidential "determination" is needed because "consideration" implies that the President could approve special activities even if the requirements were not satisfied.

(4) Clerics, Journalists, Academics. Sec. 142 retains the prohibitions on cover and paid operational use. The working group proposes a substitute that requires only guidelines. (Attached is a re-draft of the working group substitute.)

(5) Oversight. Sec. 152 on "fully and currently informed" begins: "Under such administrative procedures as the President may establish consistent with all applicable authorities and duties, including those conferred by the Constitution upon the legislative and executive branches,

the head of each entity...." The working group position is unclear, but there is concern to protect the President's constitutional prerogatives. This language respects those prerogatives by recognizing the President's authority to prescribe the administrative procedures for informing the Intelligence Committees and by expressly acknowledging the constitutional separation of powers..

Title II

(6) FI collection review. Sec. 205(b)(3) requires the President to reaffirm with prior NSC review any FI collection in extraordinary circumstances against U.S. persons using covert techniques that continues beyond one year or changes substantially in technique or purpose. Sec. 205(d)(2) requires annual review, with notice to the Attorney General or a designee, of ongoing FI collection against U.S. persons using any clandestine means. These new review requirements may be acceptable to the working group.

(7) Separate FI covert technique targets. Sec. 205(c) permits FI collection against two categories of U.S. persons with approval of a Presidential designee in unusual circumstances to collect necessary foreign intelligence -- a corporation or other commercial entity directed and controlled by a foreign power, and a senior official of a foreign government. These separate standards were suggested by the

working group, but the approval requirements are somewhat more stringent.

(8) FI collection in the U.S. by CIA. Sec. 205(d)(1) allows CIA to target the two caregories of U.S. persons listed above within the United States by clandestine means through established sources. The working group proposes that CIA be allowed to target any U.S. person in the United States to collect foreign intelligence by clandestine pretext interviews. However, such broad CIA authority within the United States is unnecessary. Demonstrated CIA needs are served by permitting only the targeting of foreign-controlled commercial entities and senior foreign officials who are U.S. persons, as well as by the revised potential source authority below.

(9) FI collection in the U.S. by FBI. Sec. 205(d)(1) also requires that FBI collection against U.S. civilians in the United States must be "with notice to the Attorney General or a designee." This may be acceptable to the working group, because current guidelines are even stricter.

(10) Potential source collection. Sec. 207 allows any entity, including CIA within the United States, to target U.S. persons to collect information about potential sources. The potential source may be a foreigner, and the U.S. person may be targeted to get information needed to recruit the foreigner. This responds to CIA concerns. However, collection using

more than interviews (pretext included), physical surveillance for identification, and name checks must be approved by the agency head with notice to the Attorney General or a designee. Such notice is also required for collection beyond six months. These stricter approval requirements may raise problems for the working group, but they are needed because of the enormous scope of potential source collection.

(11) Collection for security purposes. Sec. 208 limits collection about breaches of contractual obligations by employees or former employees to that necessary to refer the matter to the Department of Justice. Written findings for the use of clandestine means in any security inquiries are also added. The limit on contractual obligation investigations may raise problems for the working group, but is justified because only the Justice Department may take action in cases of breach of contract.

Title III

(12) Physical search in the U.S. Title III conforms as closely as possible to the Foreign Intelligence Surveillance Act, despite working group proposals for modifications.

Title IV

(13) CIA services of common concern. Sec. 414 (10) does not specify CIA services of common concern, such as

STAT [redacted] responsibilities.

CIA proposes that they be added, but there is resistance in the Committee to specifying CIA responsibilities in this manner.

(14) Criminal penalties for disclosure. Sec. 443(b) provides criminal penalties for government employees and former employees who breach secrecy agreements and disclose identities of agents under cover. CIA prefers separate legislation, like the House Committee bill, that is not limited to employees and former employees. However, the Committee wants to address this matter in the charter, and limitation to employees and former employees is needed to avoid First Amendment problems.

Attachment

RESTRICTIONS ON COVER AND OPERATIONAL USE OF CERTAIN CATEGORIES OF INDIVIDUALS

Sec. 141. (a) In consultation with the head of each entity of the intelligence community, the Director of National Intelligence or, for the Federal Bureau of Investigation, the Attorney General shall establish guidelines and procedures for that entity which shall--

(1) limit the use of any affiliation, real or ostensible, with any United States religious organization, United States media organization, the Peace Corps, or any United States Government program designed to promote education or the arts, humanities, or cultural affairs through international exchanges, and

(2) limit the paid operational use of any person who --

(A) is a United States person who follows a full-time religious vocation;

(B) is a journalist accredited to any United States media organization;

(C) is regularly involved in the editing of material for, or acts to set policy for or provide direction to, any United States media organization; or

(D) is a United States person who is traveling or temporarily residing outside the United States under the sponsorship and support of a United States educational institution or a United States Government program designed to promote education or the arts, humanities, or cultural affairs,

in such manner as to protect the integrity of such professions and institutions.

(b) The guidelines and procedures established by the Director of National Intelligence under subsection (a) shall be reviewed prior to promulgation by the National Security Council or a committee thereof designated by the President for that purpose. No such review may be made by the National Security Council or a committee thereof unless the following officers, or if unavailable their representatives, were present: the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Education, and the Director of National Intelligence

(c) The Director of National Intelligence or the Attorney General shall provide the guidelines and procedures established under subsection (a), and any amendments thereto, to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence a reasonable time prior to their effective date.